

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	§	
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	§	
CELSIUS CUSTOMER PREFERENCE	§	Adv. Proc. No. 24-04024 (MG)
ACTIONS.	§	
	§	
	§	

**ORDER GRANTING REVISED MOTION FOR AN ORDER ESTABLISHING
STREAMLINED PROCEDURES GOVERNING AVOIDANCE ACTIONS
PURSUANT TO SECTIONS 502, 547, AND 550 OF THE BANKRUPTCY CODE**

Upon the *Revised Motion for an Order Establishing Streamlined Procedures Governing Avoidance Actions Pursuant To Sections 502, 547, and 550 of the Bankruptcy Code* (the “Motion”),¹ filed by Mohsin Y. Meghji, as Litigation Administrator for Celsius Network LLC and its affiliated post-effective date debtors (the “Plaintiff” or “Litigation Administrator”), for entry of an order (the “Procedures Order”) establishing streamlined procedures governing the avoidance actions brought by Plaintiff pursuant to sections 502, 547, and 550 of the Bankruptcy Code identified in **Exhibit 1** annexed hereto (each an “Avoidance Action,” collectively, the “Avoidance Actions”); and the Court having jurisdiction to consider and determine the Motion as a core proceeding in accordance with 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having held a hearing on October 8, 2024 to consider the requested relief in the Motion (the “Hearing”);² and upon the record of the Hearing and all of the proceedings before the Court, the Court finds and determines that the relief

¹ Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them as in the Motion.

² The record of the Hearing is incorporated as if fully set forth herein and, to the extent the terms of this Procedures Order are deemed inconsistent with the representations regarding such terms made by counsel to Plaintiff at the Hearing, the terms presented at the Hearing shall control.

requested in the Motion is in the best interest of the Litigation Administrator, creditors, and all parties-in-interest, that the Litigation Administrator has provided due and adequate notice of the Motion and Hearing, and that no other notice is necessary, and that the legal and factual bases set forth in the Motion establish just and sufficient cause to grant the relief requested therein, it is hereby:

ORDERED, that the Motion is granted as set forth herein;

ORDERED, that the procedures governing all parties to the Avoidance Actions attached hereto as **Exhibit 2** (the “Avoidance Action Procedures”) and incorporated herein by reference, are hereby approved and shall govern the Avoidance Actions effective *nunc pro tunc* to July 1, 2024;

ORDERED, that the Litigation Administrator shall file a written status update ninety (90) days after entry of this Procedures Order (and every 90 days thereafter). Each written report shall list the status of each Avoidance Action and include the following information about each Avoidance Action, as applicable: (i) the case name and adversary proceeding number; (ii) the date the summons was served; (iii) the date a responsive pleading was filed or is due; (iv) the date a Notice of Mediator Selection (defined herein) was filed and the name of the selected Mediator (defined herein); (v) the date the Mediator’s Report (defined herein) was filed; (vi) whether the Avoidance Action has been consensually resolved; and (vii) the date on which any pretrial scheduling conference is scheduled or was held;

ORDERED, that the Litigation Administrator shall prepare, no later than five days after entry of this Order, (i) a form Hardship Application to be used by defendants applying to the Court for a full or partial waiver of their portion of the Mediation Fees, which must be accompanied with supporting evidence of an applicant’s financial hardship, and (ii) a proposed sealing order to be

entered on the Consolidated Docket that will seal all Hardship Applications filed without further order of the Court;

ORDERED, that the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules shall apply to the Avoidance Actions, except to the extent that they conflict with the Avoidance Action Procedures;

ORDERED, that the time periods set forth in this Procedures Order and the Avoidance Action Procedures shall be calculated in accordance with Bankruptcy Rule 9006(a);

ORDERED, that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Procedures Order; and

ORDERED, that this Procedures Order shall be effective immediately upon its entry.

IT IS SO ORDERED.

Dated: November 7, 2024
New York, New York

/s/ Martin Glenn
MARTIN GLENN
Chief United States Bankruptcy Judge

EXHIBIT 1
AVOIDANCE ACTIONS

The Avoidance Actions are listed below by their case number as adversary proceedings
to the Chapter 11 Cases:¹

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| • 24-01505 | • 24-01523 | • 24-01541 |
| • 24-01506 | • 24-01524 | • 24-01542 |
| • 24-01507 | • 24-01525 | • 24-01543 |
| • 24-01508 | • 24-01526 | • 24-01544 |
| • 24-01509 | • 24-01527 | • 24-01545 |
| • 24-01510 | • 24-01528 | • 24-01546 |
| • 24-01511 | • 24-01529 | • 24-01547 |
| • 24-01512 | • 24-01531 | • 24-01549 |
| • 24-01514 | • 24-01532 | • 24-01550 |
| • 24-01515 | • 24-01533 | • 24-01551 |
| • 24-01516 | • 24-01535 | • 24-01552 |
| • 24-01517 | • 24-01536 | • 24-01553 |
| • 24-01519 | • 24-01537 | • 24-01554 |
| • 24-01520 | • 24-01538 | • 24-01555 |
| • 24-01521 | • 24-01539 | • 24-01556 |
| • 24-01522 | • 24-01540 | • 24-01557 |

¹ If any Defendants in the Avoidance Actions have not been served the complaint and summons as of the date the Proposed Order is entered, these Defendants will be bound by the Proposed Order once service is effected.

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EXHIBIT 2

AVOIDANCE ACTION PROCEDURES

Phase One Issues, Schedule, and Procedures

- Phase one issues shall include, and shall be limited to:
 - Whether the presumption against extraterritoriality is applicable to the Avoidance Actions, and if so, whether 11 U.S.C. § 547 applies extraterritorially.
 - Whether the Court has specific personal jurisdiction over Defendants in connection with the Avoidance Actions.
 - Whether the definition of “Withdrawal Preference Exposure” under the Plan governs, or 11 U.S.C. §§ 547(c) and 550, govern for purposes of calculating the amount of the Defendants’ potential liability in the Avoidance Actions.
- Moratorium to Allow for Voluntary Mediation – To allow time for parties to engage in voluntary mediation, there will be a moratorium following entry of the Proposed Order, which will conclude on the date that is 120 days after the entry of the Proposed Order (or, if that date falls on a weekend or holiday, the following business day).
- Briefing Schedule – The phase one briefing will occur in two stages:
 - Opening briefs will be due on the date that is 56 days following the conclusion of the moratorium.
 - Response briefs will be due on the date the is 56 days following the filing of opening briefs.
 - The Court will set a hearing on the phase one issues to occur after the close of briefing.
- Pages Limits – The following page limits and related rules shall govern the phase one briefing:
 - Defendants shall be entitled to submit one joint opening brief of 75 pages. The Litigation Administrator shall be entitled to submit one opening brief of 75 pages.
 - Defendants shall be entitled to submit one joint response brief of 75 pages. The Litigation Administrator shall be entitled to submit one response brief of 75 pages.

- Defendants shall coordinate among themselves regarding the process for preparing the joint opening and response briefs. Should any Defendant wish to make an argument that is **not** already being made in a joint brief, that Defendant may seek leave from the Court to make a supplemental filing. Such request to the Court must be made at least five (5) days before the joint brief is due and clearly state (i) the proposed issue to be briefed and (ii) the requested number of pages for the supplemental brief.
- Stay of Litigation – During phase one, all deadlines in connection with each Defendant’s individual Avoidance Action shall be stayed.
- Voluntary Mediation – During phase one, parties may engage in voluntary mediation at any time. To the extent that Foreign Defendants elect to participate in voluntary mediation, such participation shall not be deemed as consent to personal jurisdiction, and those Defendants shall reserve all rights as to extraterritoriality, personal jurisdiction, and related defenses. The voluntary mediation will be subject to the mediation procedures outlined in the Proposed Order unless the parties mutually assent to other procedures.
- No Discovery – No discovery will be allowed in connection with the phase one issues. To the extent a party believes discovery is required to decide a phase one issue, the party can make that argument in its briefing.

Phase Two Issues, Schedule, and Procedures

- Phase two issues shall include, and shall be limited to:
 - Whether the Litigation Administrator’s claims are barred by the ordinary business terms defense under 11 U.S.C. § 547(c)(2)(B).
 - Whether the Litigation Administrator’s claims are barred by the safe harbor defense under 11 U.S.C. § 546(e).
 - Whether any Defendant can rebut the presumption of insolvency during the preference period.
 - Any “phase one” issue that the Court determines requires evidence to decide or any other issue that the Court grants parties leave to raise in phase two.
- Deadline to Respond to Complaints – On the date that is 30 days after the Court rules on the phase one issues (or, if that date is a weekend or holiday, the next business day), and solely to the extent that the Avoidance Actions have not been fully adjudicated by the Court’s phase one rulings, all Defendants who have been properly served must, to the extent they have not already done so, answer or otherwise respond to the complaints filed in their individual Avoidance Actions. For the avoidance of doubt, for any Defendant who has been properly served and has

not timely answered or otherwise responded to the complaint filed against them, the Litigation Administrator may take all appropriate steps to obtain a default judgment in those Avoidance Actions, including seeking an entry of a default judgment and pursuing related litigation. Other than responses to the complaints and related litigation, if a Defendant fails to timely respond to the complaint as described herein, all dates and deadlines in connection with each Defendant's Avoidance Action (including briefing deadlines, discovery deadlines and court conferences) shall be stayed.

- Litigation Schedule – Within fourteen (14) days after the Court rules on the phase one issues (or, if that date is a weekend or holiday, the next business day), the parties shall jointly submit a proposed schedule regarding discovery and briefing in connection with the phase two issues. If the parties are unable to reach agreement on a proposed schedule, the parties shall submit competing proposed schedules and identify the points of disagreement for the Court to resolve.
- Page Limits – The following page limits and related rules shall govern the phase two briefing:
 - Defendants shall be entitled to submit one joint opening brief of 75 pages.
 - The Litigation Administrator shall be entitled to submit one response brief of 75 pages.
 - Defendants shall be entitled to submit one joint reply brief of 50 pages.
 - Defendants shall coordinate among themselves regarding the process for preparing the joint opening and reply briefs. Should any Defendant wish to make an argument that is **not** already being made in a joint brief, that Defendant may seek leave from the Court to make a supplemental filing. Such request to the Court must be made at least five (5) days before the joint brief is due and clearly state (i) the proposed issue to be briefed and (ii) the requested number of pages for the supplemental brief.
- Evidentiary Hearing – Following the close of briefing, the Court will schedule an evidentiary hearing on the phase two issues.

Mandatory Mediation Procedures and Requirements

- Mandatory Mediation Start Date – On the date that is 35 days following the deadline for responses to the complaints, mandatory mediation shall begin pursuant to the procedures outlined below (the “**Mandatory Mediation Start Date**”).
- Requirement to Participate in Mediation – To the extent a Defendant has not already participated in mediation and the Avoidance Action against such Defendant has not been resolved, then that Defendant must participate in mandatory mediation. Following the Mandatory Mediation Start Date, the Defendant and the Litigation

Administrator shall jointly select a mediator (the “**Mediator**”) from the list of mediators (the “**Mediator List**”), a copy of which is attached as **Exhibit 3** to the Proposed Order.¹ Notwithstanding the foregoing, to the extent the parties agree to mediate outside of the continental United States or Canada, the parties may jointly select a mutually-agreeable Mediator in the location of that mediation and shall not be limited to those mediators on the Mediator List. Following the selection of a Mediator, the Litigation Administrator shall file on the respective adversary proceeding docket or applicable consolidated docket, if any, a notice of Mediator selection (the “**Notice of Mediator Selection**”). Except as otherwise set forth herein, if the parties are unable to agree on a Mediator within 30 days from the Mandatory Mediation Start Date, the Litigation Administrator shall request that the Court appoint a Mediator from the Mediator List.²

- **Mediator Fees** - The Mediator’s fees and reasonable expenses (the “**Mediation Fee**”) shall be shared by the parties on a fixed-fee schedule as set forth below.³ The Litigation Administrator is responsible for sixty (60) percent of the Mediation Fee, and Defendants are responsible for forty (40) percent of the Mediation Fee. The parties shall pay one quarter of the Mediation Fee at least seven (7) calendar days prior to the commencement of mediation (the “**Initial Mediation Fee**”). The remaining fee will be due and paid by the parties on or before the date of mediation, should the mediation go forward. If the parties settle prior to the mediation, the Mediator must be informed of the settlement prior to seven calendar days before the scheduled mediation or the Initial Mediation Fee is nonrefundable. If a party fails to attend the mediation, or fails to cancel or adjourn the mediation at least 24 hours in advance of the start of the mediation, that party will bear sole responsibility for the remaining Mediation Fee. The Mediation Fee shall be as follows:

- cases with a claim amount (as reflected in the complaint) greater than \$100,000 and less than \$250,000: \$5,000 per case;
- cases with a claim amount (as reflected in the complaint) equal to or greater than \$250,000 and less than \$500,000: \$6,500 per case;
- cases with a claim amount (as reflected in the complaint) equal to or greater than \$500,000 and less than \$1,000,000: \$8,000 per case; and

¹ Notwithstanding the foregoing, with respect to any group mediation of cases with aggregate claim amounts in excess of \$25,000,000 (a “**Large Group Mediation**”), the Defendants and Plaintiff shall confer in good faith to jointly select a mutually-agreeable Mediator and shall not be limited to those mediators on **Exhibit 3**. If the parties to a Large Group Mediation are unable to agree on a Mediator within a reasonable time, the Court shall appoint one for them.

² Plaintiff reserves the right to add or remove mediators from the Mediator List any time after the original Mediator List is filed with the Court, including after any order is entered approving the Motion, provided that the additional mediators will be selected from the register of mediators maintained by the Court.

³ Plaintiff, in his sole discretion, may agree to a different division of the mediator’s fees and expenses.

- cases with a claim amount (as reflected in the complaint) equal to or greater than \$1,000,000: to be determined by the Plaintiff, Defendant, and Mediator on a case-by-case basis.⁴
- Hardship Application – Defendants facing financial hardship may apply to the Court for a full or partial waiver of their portion of the Mediation Fees (a “**Hardship Application**”). Hardship Applications should be filed under seal in the consolidated docket styled *In re Celsius Customer Preference Actions*, Adv. Pro. No. 24-04024 (MG) (Bankr. S.D.N.Y.), and an unredacted copy must be provided to counsel for the Litigation Administrator and the United States Trustee. Each Hardship Application must include supporting evidence of the applicant’s financial hardship. Any opposition to a Hardship Application must be made no later than seven days after the filing of such application.
- Location for Mediations – Mediations shall take place at a location agreed to by the parties and the Mediator, including holding mediations via video conference. All cases with claim amounts under \$500,000 shall be conducted over video conference, and cases with claim amounts over \$500,000 may be conducted over video conference or in-person, as the parties and the Mediator agree. In-person mediations shall be held at the law office of Plaintiff’s counsel, Defendant’s counsel, the Mediator’s office, or at another location agreed upon by the Mediator, Plaintiff, and the Defendant.
- Mediator’s Travel Expenses – If the parties mutually request that a Mediator travel from the Mediator’s home state to another location for mediation, and the Mediator agrees to the location, the parties shall split the reasonable costs of the Mediator’s travel and accommodations, and the Mediation Fee shall increase as follows: \$500 per party, per case in the event that the Mediator travels within the continental United States or Canada, and \$1000 per party, per case in the event the Mediator travels outside the continental United States or Canada.⁵
- Commencement of Mediation – Promptly after the filing of the Notice of Mediator Selection, Plaintiff’s and Defendant’s counsel (or the Defendant, if appearing *pro se*) shall jointly contact the selected Mediator to discuss the mediation. The mediation will be scheduled within sixty (60) days of the filing of the Notice of Mediator Selection.

⁴ To the extent any Defendants choose to mediate in a group, the above mediation fees will be determined based on the aggregate claim amounts reflected in the complaints filed against the members of the group.

⁵ For the avoidance of doubt, the fees and costs set forth in this paragraph shall remain the same regardless of whether the Mediator is participating in a group mediation.

- General Order M-390 – Except as set forth herein, the mediation shall be conducted in accordance with General Order M-390, which is available on the Court’s website (<http://www.nysb.uscourts.gov/>).
- Position Statements – The parties shall exchange, and provide the Mediator with a copy of, their position statements (“**Position Statements**”), which may not exceed ten (10) pages double-spaced in 12 point type (exclusive of exhibits and schedules),⁶ at least ten (10) days prior to the scheduled mediation. The Mediator may also require the parties to provide to the Mediator any relevant papers and exhibits as well as a settlement proposal. The Mediator may also require the parties to exchange documents. The Mediator may permit parties to provide the Mediator with confidential briefing that is not exchanged between the parties.
- Mediator’s Authority – The Mediator will preside over the mediation with full authority to determine the nature and order of the parties’ presentations and with the full authority to implement any additional procedures which are reasonable and practical under the circumstances.
- Time to Mediate – The length of time necessary to effectively complete the mediation will be within the Mediator’s discretion. The Mediator may also adjourn a mediation that has been commenced if the Mediator determines that an adjournment is in the best interests of the parties.
- Good Faith Requirement – The parties shall participate in the mediation in good faith. A lack of participation in good faith includes, but is not limited to, the failure to timely pay the Mediator in accordance with these Proposed Procedures. The mediation(s) shall be attended by a representative of the Defendant or of a group of Defendants with settlement authority (and if a Defendant is represented by counsel, their counsel) as well as counsel for Plaintiff (who must have settlement authority from Plaintiff).
- Mediator Recusals – No Mediator shall mediate any Avoidance Action in which the Mediator or the Mediator’s law firm currently represents a party in that Avoidance Action. To the extent the Mediator’s law firm represents a party with respect to any Avoidance Action or is otherwise currently adverse to Celsius, the party to the Avoidance Action that the Mediator is mediating, or the Litigation Administrator, the Mediator shall inform the parties, in writing, of the representation and certify that he or she has been walled off from the representation. Notwithstanding the foregoing, no Defendant shall be required to mediate with a Mediator whose law firm is currently adverse to such Defendant in any matter.

⁶ For Large Group Mediations, the parties and the Mediator shall agree on a reasonable page limit for the parties’ position statements.

- Mediation Privilege Applies – All proceedings and writings incident to the mediation will be considered privileged and confidential and subject to all the protections of Federal Rule of Evidence 408 and shall not be reported or admitted in evidence for any reason whatsoever. Nothing stated or exchanged during mediation shall operate as an admission of liability, wrongdoing, or responsibility.
- Deadline to Conclude Mediation – The mediation shall be conducted so as to be completed within one hundred and eighty (180) days after the date the Notice of Mediator Selection is filed, which deadline may be extended by the mutual consent of Plaintiff, the Defendant, and the Mediator.
- Non-Participation – If a party (a) fails to submit the required Position Statement or other submissions as provided in these Proposed Procedures or as may be agreed to by the Mediator or ordered by the Court, or (b) fails to attend the mediation, then the non-defaulting party may file a motion with the Court seeking sanctions as may be appropriate under the circumstances, including a motion for default judgment.
- Mediator's Report – Within ten (10) days after the conclusion of each mediation, the Mediator shall file a Mediator's Report in the Avoidance Action, which shall be limited to stating only (i) whether the Avoidance Action settled or did not settle; (ii) the date or dates the mediation took place; and (iii) the names of the parties and/or counsel who attended.
- Discovery – Although discovery shall be stayed in each Defendant's individual Avoidance Action, such stay of discovery shall in no way preclude the parties from informally exchanging documents and other information on a consensual basis in an attempt to resolve an Avoidance Action in advance of, or during, any mediation.
- Settlement of Avoidance Actions - Consistent with the Plan, Plaintiff is authorized to compromise or settle any of the Avoidance Actions without further court approval. *See* Plan Art. IV(S).

Avoidance Actions Omnibus Hearings

- The Court will schedule regular omnibus hearing dates in the Chapter 11 Cases, on which dates any post-mediation Pretrial Scheduling Conference will take place. Any pretrial motions filed by the parties in the Avoidance Actions must be set for hearing on one of the omnibus hearing dates unless otherwise ordered by the Court.

Motions Affecting all Avoidance Actions or Consolidated Avoidance Actions

- Any motions filed by Plaintiff that affect all of the Avoidance Actions shall be filed in the consolidated docket styled *In re Celsius Customer Preference Actions* with the Adv. Proc. No. 24-04024 (MG) (Bankr. S.D.N.Y.) and not in each separately docketed Avoidance Action; provided, however, that each Defendant shall receive notice of the filing of the same.

- Any motions filed by Defendants whose Avoidance Actions have been consolidated shall be filed on the consolidated docket and not in each separately docketed Avoidance Action.
- The Avoidance Actions of the Defendants represented by Troutman Pepper Hamilton Sanders LLP and Lowenstein Sandler LLP shall be deemed to be consolidated for pre-trial purposes.

EXHIBIT 3
PROPOSED MEDIATORS

1. Derek Abbott
2. Chris Battaglia
3. Conor Bifferato
4. Timothy Gallagher
5. Judge Harlin DeWayne Hale
6. Brad Sandler
7. Judge Alan Shiff
8. Judge Christopher S. Sontchi
9. Sean Southard
10. Judge Michael B. Slade¹⁰

¹⁰ Mr. Slade has been appointed as a judge on the United States Bankruptcy Court for the Northern District of Illinois, with his investiture to occur on November 25, 2024. Mr. Slade has agreed to mediate disputes involving Defendants with approved Hardship Applications.